

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

VICTOR ARIZA,

Plaintiff,

v.

Case No: 6:23-cv-2160-GAP-EJK

CASA FEBUS FL 1, LLC,

Defendant.

ORDER

This cause comes before the Court on Plaintiff's Motion for Entry of Clerk's Default (the "Motion"), filed January 16, 2024. (Doc. 10.) For the reasons set forth below, the Motion is due to be denied.

I. BACKGROUND

On November 7, 2023, Victor Ariza ("Plaintiff") instituted this action against Casa Febus FL 1, LLC ("Defendant"), for violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213. (Doc. 1.) Plaintiff now seeks a clerk's default for Defendant's failure to plead or otherwise defend after Plaintiff served Defendant on December 11, 2023, by leaving a copy of the Summons and Complaint with Lisandra Rivas as "manager," according to the Affidavit of Service. (Doc. 9.)

II. STANDARD

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise,

the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Before the clerk may enter default, he or she must determine that effective service has been made on the defaulting defendant because, without effective service, there is no jurisdiction and no obligation to answer or "otherwise defend." *See Kelly v. Florida*, 233 F. App'x 883, 885 (11th Cir. 2007) (unpublished).

III. DISCUSSION

Federal Rule of Civil Procedure 4(h) provides that service on a limited liability company may be perfected by giving a copy of the summons and complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. Fed. R. Civ. P. 4(h)(1)(B). A limited liability company may also be served by following state law. Fed. R. Civ. P. 4(h)(1)(A), 4(e)(1). Under Florida law, if the limited liability company cannot be served via its registered agent after a good faith attempt, process may be served on:

- (a) Any manager of a manager-managed domestic limited liability company or registered foreign limited liability company.
- (b) Any member of a member-managed domestic limited liability company or registered foreign limited liability company.
- (c) Any person listed publicly by the domestic limited liability company or registered foreign limited liability company on its latest annual report, as most recently amended.

Fla. Stat. § 48.062(3)(a)–(c).

According to Florida’s Division of Corporations, Defendant’s registered agent is Emilio Nevarez.¹ He is also the sole member manager of Defendant. (*Id.*) The address for Mr. Nevarez, as registered agent, is listed as 8211 Randal Park, Orlando, FL 32804. (*Id.*) Plaintiff’s process server made two good faith attempts to serve Mr. Nevarez at that address, but after the second attempt, the process server was told that “defendant does not reside here.” (Doc. 9.) Plaintiff’s process server subsequently purported to complete service of process on December 11, 2023, by serving Lisandra Rivas as “manager” at 1397 E Osceola Pkwy, Kissimmee, FL 34744. (*Id.*)

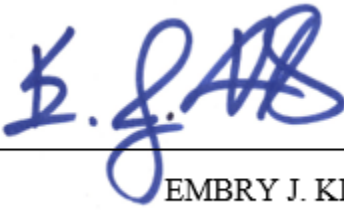
The Motion is due to be denied because it fails to include a memorandum of law that addresses the appropriate standard under Federal Rule of Procedure 55(a), as required by Local Rule 3.01(a). The Motion is also due to be denied because Plaintiff does not explain how Lisandra Rivas, who is not a member manager of the corporation according to Defendant’s most recent Annual Report, is authorized to accept service on behalf of Defendant at an address not listed on the Defendant’s most recent Annual Report or Articles of Organization. (*See n.1*)

Accordingly, it is **ORDERED** Plaintiff’s Motion for Entry of Clerk’s Default (Doc. 10) is **DENIED**. Plaintiff may have through and until **May 3, 2024**, to file a

¹ *Detail by Entity Name of Casa Febus FL 1, LLC*, Division of Corporations, an official State of Florida Website, <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=CASAFEBUSFL1%20L140001880340&aggregateId=flal-114000188034-b6e8cd70-a75c-40f4-81e3-ddfbf3a153c7&searchTerm=CASA%20FEBUS%20FL%201%2C%20LLC%2C&listNameOrder=CASAFEBUSFL1%20L140001880340>. (last visited Mar. 19, 2024).

renewed motion for clerk's default that addresses the issues noted above, or to effect proper service upon Defendant.

DONE and **ORDERED** in Orlando, Florida on April 3, 2024.



EMBRY J. KIDD
UNITED STATES MAGISTRATE JUDGE